

SEP 27 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

PEDRO LOPEZ-GALLEGOS,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 06-70549

Agency No. A92-779-426

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 24, 2007 ***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pedro Lopez-Gallegos, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from the Immigration Judge's ("IJ") order denying his motion to reopen and rescind a removal order entered against him in absentia. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The BIA did not abuse its discretion when it determined that Lopez-Gallegos' motion to reopen was untimely. *See* 8 C.F.R. § 1003.23(b)(4)(ii) (a motion to reopen and rescind based on exceptional circumstances must be filed within 180 days of the in absentia order of removal). Lopez-Gallegos failed to demonstrate that he exercised diligence in filing the motion after meeting with new counsel and discovering his prior counsel's alleged ineffective assistance. *See Iturribarria*, 321 F.3d at 899 (where equitable tolling applies, limitations period begins when alien meets with new counsel and learns of counsel's fraud, deception or error).

PETITION FOR REVIEW DENIED.